

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 17th Day of March-2025

ORIGINAL SUIT NO.165/2024

PLAINTIFFS : 1. Shrishail
S/o Ramachandrappa Rudrappagol,
Age: 50 years, Occ: Agriculture.

2. Bhagavantraya
S/o Shrishail Rudrappagol,
Age: 29 years, Occ: Government Servant,

Both are R/o Muraganoor, Tq: Yadrami,
Dist: Kalaburagi.

.....(By. Sri. S.A., Advocate)

V/s.

DEFENDANTS: 1. Saraswatiwwa
W/o Ramachandrappa Rudrappagol,
Age: 68 years, Occ: Agriculture.

2. Smt. Mallamma
W/o Nadagouda Kalagi,
Age: 50 years, Occ: Agriculture,

Both are R/o Muraganoor, Tq: Yadrami,
Dist: Kalaburagi.

..... (D1 By. Sri.B.N.K., Advocate)

..... (D2 By. Sri.M.S.B., Advocate)

PARTIES TO I.A. NO.I

APPLICANT/ : Shrishail and Another
PLAINTIFFS
V/S

OPPONENT/ : Saraswatiwwa and Another
DEFENDANTS

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	15-10-2024
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	12-12-2024
vi.	The date on which the orders were passed on the said application	17-03-2025

ORDER ON I.A No.I FILED BY PLAINTIFFS U/O 39 RULE 1 &
2 OF C.P.C.

1. The plaintiffs have filed I.A No.I under Order 39 Rule 1 & 2 of C.P.C., seeking temporary injunction to restrain defendant No.2 from got mutating her name to the record or rights of portion of the suit property and to further restrain her from alienating or selling or creating any type of charge over suit schedule property pending disposal of the suit.

2. The plaintiff No.1 sworn to the affidavit stating that they and defendant No.1 compromised the dispute pertaining to land bearing Sy.No.5/*/1 measuring 12 acres 26 guntas as per compromise decree passed in O.S.No.80/2017. However, there was a condition in the compromise decree that defendant No.1 can enjoy the property allotted to her share during her lifetime but she cannot alienate the said property by way of will or by way of any other mode. The court accepted the compromise petition and passed the compromise decree. But now defendant No.1 is acting against the decree and alienated the suit property through a registered sale deed. But 'J' form is still not accepted as such mutation is pending. The plaintiffs came to know about the same and immediately filed this suit. The defendant No.2 on basis of 'J' form may get mutate her name to the suit property and also trying to alienate the suit property. Therefore, plaintiffs prayed to grant temporary injunction against defendant No.2.

3. In pursuance of summons defendant No.2 appeared through her counsel and resisted the claim of plaintiffs by filing written statement. The defendant no.2 filed memo stating that the contents of written statement may be considered as objection to IA No.1. The defendant No.2 contended that the suit in the present form is not maintainable either in law or on facts and deserves to be dismissed in limine. The plaintiffs have approached this court suppressing true and material facts and have wrongly claimed that defendant No.1 has interfered into the peaceful possession of suit property. The defendant No.2 specifically contended that defendant No.1 being the absolute owner in possession of land bearing Sy.No.5/1 measuring 6

acres has sold northern side of land measuring 2 acres in favour of one Hanamanthray S/o Mareppa Talawar and now the said Hanamanthray is in possession of said property.

4. The defendant No.2 further contended that since the plaintiffs did not take care of defendant No.1 an old age women though she was under dire need of money to meet out her basic necessities of life and medical expenses therefore she alienated remaining extent of 4 acres of land in Sy.No.5/1 in favour of defendant No.2 through a registered sale deed dated 27-09-2024 for lawful consideration. Even possession of the said property was delivered to defendant No.2. The defendant No.1 had absolute salable right and interest to alienate the suit property as such the plaintiffs cannot question the alienation. The plaintiffs cannot take away the rights of defendant No.1 assured to her U/Sec.14 of the Hindu Succession Act. The plaintiffs without having any right over the suit land have filed this suit challenging the sale deed. The defendant No.2 is bonafide purchaser of the suit property. The possession of suit property already delivered to the defendant No.2 under the registered sale deed and even the plaintiffs have knowledge about the same. But the plaintiffs only with an intention to grab the property of defendant No.1 has filed this suit. The defendant No.2 denies the rest of plaint averments and prayed to dismiss the suit as well as IA No.1.

5. On considering I.A No.1, affidavit and objection to IA No.1, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiffs/applicants have made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiffs/applicants?
3. Whether the irreparable loss and injury would be caused to the plaintiffs /applicants if the temporary injunction is refused?
4. What order?
6. Heard arguments of both sides.
7. My answer to the above points are as under:
Point No.1 : In the **Affirmative.**
Point No.2 : In the **Negative.**
Point No.3 : In the **Negative.**
Point No.4 : **As per final order for the following ;**

REASONS

8. **Point No.1:-** It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief

and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order. At the same time the court cannot conduct a mini trial nor can court express its opinion regarding merits of the case while dealing with the applications of this nature. Only function of the court at this interlocutory stage is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. It is useful to refer decision of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy**, reported in **AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction is granted.

9. It is also necessary to mention here that “Prima facie case” not to be confused with “prima facie title” which has to be established on evidence at the trial. Prima facie case is a substantial question raises bona fide which needs investigation and a decision on merits. Now keeping in mind the aforesaid aspects let us consider the present application in hand.

10. The plaintiffs in order to substantiate their contentions produced record of rights of land bearing Sy.No.5/1, compromise decree passed in OS No.80/2017. The plaintiffs counsel also produced copy of sale deed dated 27-09-2024. Whereas defendants did not produced any documents.

11. Admittedly, present suit is filed seeking the relief of declaration and injunction in respect of the suit property. It is the specific contention of the plaintiffs that defendant No.1 has acted against the compromise decree passed in OS No.80/2017 and alienated the suit property and on basis sale deed 'J' form the defendant No.2 is trying to get mutate her name and also trying to alienate the suit property in favour of others. At this interlocutory stage the plaintiffs have produced record of rights of land bearing Sy.No.5/1 totally measuring 12 acres 26 gutnas of the year 2017-18 and also produced record of rights of land bearing Sy.No.5/1 measuring 10 acres 26 guntas of the year 2024-25 which are standing in the name of defendant No.1. The plaintiffs have also produced the certified copy of compromise decree and compromise petition filed in OS No.80/2017 which discloses that as per para No.6 the parties have admitted and settled that plaintiff of that suit i.e.,

defendant No.1 Saraswatiwwa has under taken that she will not sale or create Will deed over the suit property during her lifetime in favour of anybody and after her death defendant No.1 to 3 i.e., plaintiff No.1 and 2 and one Smt. Nagamma are entitled to get mutate their names to the land bearing Sy.No.5/1 measuring 6 acres.

12. The plaintiffs have also produced the registered sale deed dated 27-09-2024 which discloses that defendant No.1 has alienated portion of suit property measuring 4 acres in favour defendant No.2 for consideration amount of Rs.8,80,000/- as such it is clear that defendant No.1 has alienated the portion of suit property prior to filing of the suit. The aspect regarding the validity of sale deed dated 27-09-2024 and also the right accrued to the defendant No.1 under the compromise decree is absolute right or not, and whether the plaintiffs are entitled for the reliefs or not are all questions to be adjudicated in the preset suit which requires a full fledged trial but at this stage the materials placed before this court are sufficient to draw inference that plaintiffs have produced prima facie materials which are wroth investigating into the matter when such being the case it can be opined that the plaintiffs have made out an arguable case and whenever there is a arguable case is made out then it can be said that the plaintiffs have made out a prima-facie case. In this sense, I answer Point No.1 in the Affirmative.

13. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. The

court has to see that do the applicants/plaintiffs will sustain such injuries which cannot possibly and adequately remedied by way of damage and the said damage would be inadequate in case of success of the applicants/plaintiffs. Considering the question of balance of convenience is concerned court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

14. The plaintiffs have sought for temporary injunction against defendant No.2 to restrain her from mutating her name to the suit property and to further restrain her from alienating the property in favour of others. On perusal of the documents produced by the plaintiffs themselves the sale deed date 27-09-2024 discloses that the defendant No.1 has alienated the portion of suit property to the extent of 4 acres in favour of defendant No.2 as such the defendant No.1 has already alienated the portion of suit property in favour of defendant No.2 prior to filing of the suit. Now it is only acceptance of 'J' form and mutation of the name of the defendant No.2 is pending before the revenue officials. Since the sale deed is already executed before filing of this suit as such the sale deed is not hit by principles of lis-pendency. If the temporary order is granted it will defiantly cause hurdle to the revenue officials to mutate the name of defendant

No.2 to the portion of suit schedule property on basis of registered sale deed. Under such an event it will be nothing but restraining the public servant from discharging their duties. Moreover, defendant No.2 has already paid consideration amount of Rs.8,80,000/- and even paid stamp duty and registration charges as such she has got right to get mutate her name to the portion of the suit property subject to the validity of the sale deed. Therefore, considering all these aspects, I am of view that the balance of convenience tilts in favour of defendant No.2 and not in favour of the plaintiffs.

15. Even as far as hardship is concerned it is the defendant No.2 who will be put irreparable loss and injury compare to plaintiffs since she has already paid the consideration amount of Rs.8,80,000/- to the defendant No.1. If the name of defendant No.2 is mutated to the portion of suit schedule property no loss hardship would be caused to the plaintiffs since defendant No.1 has already alienated the portion of suit property in favour of defendant No.2 much prior to filing of this suit. Even if the defendant No.2 after mutating her name to the portion of the suit schedule property alienates the property under such an event the said alienation would be hit by lis-pendency. Moreover it is also necessary to mention here that the plaintiffs seeking the relief against the defendant No.2 in respect of entire suit property though she has purchased only portion of suit property and remaining extent of suit property is appears to be defendant No.1. Even in the present suit the suit summons to defendant No.1 is yet to be served and the plaintiffs have to seek temporary injunction as against defendant No.1 also since the

remaining extent of suit property seems to be with the defendant No.1. Hence, in this sense, I hold that the balance of convenience lies in favour of the defendant No.2 and not in favour of the plaintiffs and hardship would be caused to the defendant No.2 if temporary injunction is granted in favour of plaintiffs. Hence, I answered Point No.2 and 3 in the Negative.

16. **Point No.4** :- In view of my findings on Points No.1 to 3. Hence, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 & 2 of C.P.C., is hereby rejected.

No order as to cost.

Re issue summons to defendant No.1 if step taken by 11-06-2025.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then pronounced by me in the Open Court on this 17th Day of March-2025).

(Sandeep. A. Naik)
Senior Civil Judge,
Jewargi.